

# **Indiana Department of State Revenue**

## **Revenue Ruling #2005-01ST**

**February 10, 2005**

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### **ISSUE**

Sales and Use Tax- Exemptions for Lease and Rental of Forklift Equipment

Authority: IC 6-2.5-2-1, IC 6-2.5-4-10, IC 6-2.5-5-3 (b), IC 6-2.5-8-8, 45 IAC 2.2-5-8 (c), 45 IAC 2.2-8-12, 45 IAC 2.2-8-12 (d).

The taxpayer requests the department to rule on whether or not it should collect and remit sales tax on leases and rentals of forklift equipment when their customers state that they are entitled to manufacturing, processing or fabrication exemptions.

### **STATEMENT OF FACTS**

The taxpayer has recently acquired leases and rentals of forklift equipment. They are currently collecting and remitting sales tax on the leases and rentals. Some of their customers state that they are exempt from Indiana sales tax due to manufacturing, processing or fabrication.

### **DISCUSSION**

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. The rental or leasing of tangible personal property constitutes a retail transaction subject to the Indiana sales tax. IC 6-2.5-4-10. The transfer of tangible personal property pursuant to a conditional sales agreement is also a taxable retail transaction.

Indiana provides an exemption from the sales tax for property purchased "for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property." IC 6-2.5-5-3 (b). To be considered exempt, the item leased must have an immediate effect on the property being manufactured. "Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property."

Exemption is not provided for pre-production or post-production activities. Exemption is only provided for activities during the production process, "an integrated series of operations which places tangible personal property in a form, composition, or character different from that in

which it was acquired.” 45 IAC 2.2-5-8 (k). Pre-production activities are any activities performed prior to the beginning of the integrated production process. Post-production activities take place after the end of the integrated production process.

Warehouse activities are not part of the production process. Therefore, equipment and materials used in warehouse activities do not qualify for exemption.

Indiana provides for exemption certificates from sales tax at IC 6-2.5-8-8 in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

(b) The following are the only persons authorized to issue exemption certificates:

- (1) retail merchants, wholesalers, and manufacturers, who are registered with the department under this chapter;
- (2) organizations which are exempt from the state gross retail tax under IC 6-2.5-5-21, IC 6-2.5-5-25, or IC 6-2.5-5-26 and which are registered with the department under this chapter; and . . .

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(a) Exemption certificates may be issued [sic.]only by purchasers authorized to issue such certificates by the Department of Revenue. Retail merchants, manufacturers, wholesalers and others who must register with the Department of Revenue and who qualify to purchase exempt from tax under this Act [IC 6-2.5] may issue exemption certificates with respect to exempt transactions. All persons or entities not required to register with the Department as retail merchants, manufacturers, or wholesalers, and who are exempt under this Act [IC 6-2.5]with respect to all or a portion of their purchases are authorized to issue exemption certificates with respect to exempt transaction provided an exemption number has been assigned by the Department of Revenue, or provided that the Department of Revenue has specifically provided a form and manner for issuing exemption certificates without the need for assigning an exemption number. . . .

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid

exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax as provided in 45 IAC 2.2-8-12 (d) as follows:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof. . . .

The taxpayer should collect and remit sales tax unless the customer provides a valid exemption certificate. With a valid exemption certificate, the taxpayer need not concern himself its customers' records and supporting documentation on the exempt status of the leased equipment.

### **RULING**

The Department rules that the taxpayer's proposed method of operations does not comply with the Indiana law.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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